

## **REMARKS**

### **I. Introduction**

With the addition of new claims 12 to 26, claims 1 to 26 are pending in the present application. In view of the foregoing amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable, and reconsideration is respectfully requested.

Applicant notes with appreciation the acknowledgment of the claim for foreign priority and the indication that all certified copies of the priority documents have been received in U.S. Patent Application Serial No. 09/762,456.

Applicant thanks the Examiner for considering the previously filed Information Disclosure Statement, PTO-1449 paper and cited references.

### **II. Objection to the Specification**

As regards the objection to the Specification, the Examiner will note that the Specification has been amended herein to refer to U.S. Patent No. 6,690,616. No new matter has been added. Withdrawal of this objection is respectfully requested.

### **III. Rejection of Claims 1 to 8 and 11 Under 35 U.S.C. § 103(a)**

Claims 1 to 8 and 11 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of U.S. Patent No. 5,229,975 ("Truesdell et al."), U.S. Patent No. 4,614,945 ("Brunius et al.") and U.S. Patent No. 5,424,726 ("Beymer"). It is respectfully submitted that the combination of Truesdell et al., Brunius et al. and Beymer does not render unpatentable the present claims as amended herein for at least the following reasons.

Claim 1 relates to a device for detecting objects. Claim 1 recites that the device includes at least one distance sensor and at least one microcontroller configured to control each distance sensor. Claim 1 has been amended herein without prejudice to recite that the microcontroller is configured to apply to a transmitting signal an identifier signal that is changeable with time. Support for this amendment may be found, for example, on page 4, lines 14 to 17 of the Specification. Moreover, claim 1 recites that the microcontroller is configured to distinguish between a returned transmitting signal output and other signals received by the device based on the identifier signal.

Truesdell et al. purport to relate to a vehicle proximity sensor, Brunius et al. purport to relate to an automatic/remote RF instrument reading method and apparatus, and Beymer purports to relate to a method, apparatus and system for transmitting and receiving data in a moving linear chain. The Office Action admits at page 2 that Truesdell et al. do not disclose that a microcontroller is configured to apply an identifier to a transmitting signal. The Office Action appears to rely on Brunius et al. or Beymer for purporting to disclose that an identifier is applied to a transmitting signal. However, as indicated above, claim 1 recites that the identifier signal is changeable with time. Brunius et al. make no mention whatsoever of an identifier signal that is changeable with time being applied to a transmitting signal. In stark contrast to an identifier signal that is changeable with time, Brunius et al. mention that each transponder unit has a unique identification code associated with it and that each transponder transmits its code identification back to the mobile unit so that the mobile unit can correlate received signals with the respective transmitting transponders. See, e.g., col. 4, lines 52 to 57. Thus, Brunius et al. disclose a static identification code. That the identification code described by Brunius et al. is static is noted throughout the description by Brunius et al. Beymer is similarly deficient with respect to an identifier signal that is changeable with time.

Furthermore, the Office Action's reliance on the statement by Truesdell et al. that "[t]he microprocessor 60 may vary the repetition rate of the transmitted sound pulse in a random fashion to minimize interference with other like sensor modules" is apparently misplaced. In this regard, Truesdell et al. do not disclose, or even suggest, that a returned transmitting signal output and other signals received by a sensor module are distinguished based on the varied repetition rate. Since neither Brunius et al. nor Beymer disclose, or even suggest, an identifier signal that is changeable with time being applied to a transmission signal, neither Brunius et al. nor Beymer disclose, or even suggest, that a returned transmitting signal output and other signals received are distinguished by an identifier signal, which is changeable with time.

Not only does not combination of Truesdell et al., Brunius et al. and Beymer not disclose, or even suggest, all of the features recited in claim 1, it is respectfully submitted that there is no motivation or suggestion by Truesdell et al., Brunius et al. or Beymer to make the proposed combination. The perceived benefit alleged in the Office Action for making the proposed combination does not rise to the

level of the required motivation or suggestion required to sustain an obviousness determination. Merely because certain references can be combined does not render the resultant combination obvious unless the references also suggest the desirability of the combination. In re Mills, 916 F.2d 680, 16 U.S.P.Q.2d 1430 (Fed. Cir. 1990). The present Office Action has not set forth a sufficient motivation or suggestion by Truesdell et al., Brunius et al. or Beymer for making the proposed combination.

Furthermore, to combine Truesdell et al., Brunius et al. and Beymer as proposed in the Office Action or to modify Truesdell et al., Brunius et al. or Beymer to include a microcontroller configured to apply to a transmitting signal an identifier signal that is changeable with time would change the principle of operation of the devices described by Truesdell et al., Brunius et al. and Beymer. As such, there is no motivation to combine Truesdell et al., Brunius et al. and Beymer as proposed in the Office Action. In re Rattj, 270 F.2d 810, 123 U.S.P.Q. 349 (C.C.P.A. 1959) (if the proposed modification or combination of references would change the principle of operation of the references, then the disclosures of the references is not sufficient to render the claims prima facie obvious).

In rejecting a claim under 35 U.S.C. § 103(a), the Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Rijckaert, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish prima facie obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. In re Vaeck, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). Second, there must be a reasonable expectation of success. In re Merck & Co., Inc., 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). As indicated above, the combination of Truesdell et al., Brunius et al. and Beymer does not disclose, or even suggest, all of the limitations of claim 1. Furthermore, there is no suggestion or motivation to make the combination as proposed in the Office Action. It is therefore respectfully submitted that the combination of Truesdell et al., Brunius et al. and Beymer does not render unpatentable claim 1.

As for claims 3 to 8 and 11, which ultimately depend from claim 1 and therefore include all of the features of claim 1, it is respectfully submitted that the combination of Truesdell et al., Brunius et al. and Beymer does not render unpatentable these dependent claims for at least the same reasons more fully set forth above in support of the patentability of claim 1.

Claim 2 has been canceled herein without prejudice, thereby rendering moot the present rejection with respect to claim 2.

In view of all of the foregoing, withdrawal of this rejection is respectfully requested.

**IV. Rejection of Claims 9 and 10 Under 35 U.S.C. § 103(a)**

Claims 9 and 10 were rejected under 35 U.S.C. § 103(a) as unpatentable over the combination of Truesdell et al., Brunius et al., Beymer and U.S. Patent No. 5,946,273. It is respectfully submitted that the combination of Truesdell et al., Brunius et al., Beymer and U.S. Patent No. 5,946,273 does not render unpatentable the present claims for the following reasons.

As an initial matter, the Examiner will note that claim 9 has been rewritten herein in independent form to include all of the features recited in claim 1 as originally filed.

Applicants respectfully submit that, under 35 U.S.C. § 103(c), U.S. Patent No. 5,946,273 cannot be used for the purposes of determining obviousness of any claim of the present application under 35 U.S.C. § 103(a). The present application was filed on **August 22, 2003**. Because the present application was filed subsequent to November 29, 1999, the provisions of 35 U.S.C. § 103(c) as amended by Public Law 106-113, § 1000(a)(9) apply to the present application. Section 103(c), as amended, applies to all utility patent applications filed on or after November 29, 1999 and provides:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

The present application was filed on August 22, 2003 as a continuation of U.S. Patent Application Serial No. 09/762,456, filed on April 11, 2001, which was a National Stage application of PCT International Application No. PCT/EP99/05378, filed on July 21, 1999. U.S. Patent No. 5,946,273 issued on August 31, 1999, which is after the July 21, 1999 international filing date of PCT International Application No. PCT/EP99/05378. Accordingly, U.S. Patent No. 5,946,273 qualifies as prior art against the present application, if at all, "only under one or more of subsections (e), (f), and (g)" of 35 U.S.C. § 102.

The present application and U.S. Patent No. 5,946,273 "were, at the time the invention of the present application was made, owned by, or subject to an obligation of assignment to," Volkswagen AG. In this regard, by an assignment recorded in the records of the United States Patent and Trademark Office on September 24, 2003, at Reel 014792, Frame 0972, the entire right, title and interest in the present application was assigned to Volkswagen AG. U.S. Patent No. 5,946,273 is assigned on its face to Volkswagen AG. It is therefore respectfully submitted that, under 35 U.S.C. § 103(c), U.S. Patent No. 5,946,273 cannot be used to reject any claim of the present application under 35 U.S.C. § 103(a). It is therefore respectfully submitted that the combination of Truesdell et al., Brunius et al., Beymer and U.S. Patent No. 5,946,273 does not render unpatentable any claim of the present application. Withdrawal of this rejection is therefore respectfully requested.

#### **V. New Claims 12 to 26**

New claims 12 to 26 have been added herein. It is respectfully submitted that new claims 12 to 26 add no new matter and are fully supported by the present application, including the Specification.

Since claims 12 and 13 ultimately depend from claim 1, it is respectfully submitted that claims 12 and 13 are patentable over the references relied upon for at least the same reasons more fully set forth above in support of the patentability of claim 1.

Claim 14 includes features analogous to certain features included in claim 1. For example, claim 14 recites that a device for detecting objects includes a microcontroller configured to apply to distance sensors an identifier signal that is changeable with time. As more fully set forth above in support of the patentability of

claim 1, the combination of Truesdell et al., Brunius et al. and Beymer does not disclose or suggest this feature, and there is no motivation or suggestion to combine Truesdell et al., Brunius et al. and Beymer in the manner proposed in the Office Action. Accordingly, it is respectfully submitted that claim 14 is patentable over the references relied upon for at least this reason.

Since claims 15 to 26 ultimately depend from claim 14, it is respectfully submitted that claims 15 to 26 are patentable over the references relied upon for at least the reasons set forth above in support of the patentability of claim 14.

#### VI. Conclusion

It is therefore respectfully submitted that all of the presently pending claims are allowable. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is earnestly solicited.

Respectfully submitted,

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